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General Assembly

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7 September 2017

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Seventy-second session
Item 141 of the provisional agenda*
Scale of assessments for the apportionment of the expenses of the United Nations

Letter dated 7 September 2017 from the Secretary-General addressed to the President of the General Assembly

1. At present, four Member States are in arrears under the terms of Article 19 of the Charter of the United Nations, which states:

> A Member of the United Nations which is in arrears in the payment of its financial contributions to the Organization shall have no vote in the General Assembly if the amount of its arrears equals or exceeds the amount of the contributions due from it for the preceding two full years. The General Assembly may, nevertheless, permit such a Member to vote if it is satisfied that the failure to pay is due to conditions beyond the control of the Member.

2. The minimum payments necessary to reduce the amounts owed by those Member States on their contributions so that they remain below the gross amount assessed for the preceding two full years (2015 and 2016) are as follows:

Member State	*Minimum payment (United States dollars)*
Comoros	876 418
Guinea-Bissau	46 439
Sao Tome and Principe	779 636
Somalia	1 354 435

(*Signed*) António **Guterres**

* A/72/150

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United Nations A/72/381

General Assembly

Distr.: General
7 September 2017

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Seventy-second session
Item 73 (b) of the provisional agenda*
Promotion and protection of human rights: human rights questions, including alternative approaches for improving the effective enjoyment of human rights and fundamental freedoms

Combating intolerance, negative stereotyping, stigmatization, discrimination, incitement to violence and violence against persons, based on religion or belief

Report of the Secretary-General**

Summary

The present report is submitted in accordance with General Assembly resolution 71/195 and reports on steps taken by States to combat intolerance, negative stereotyping, stigmatization, discrimination, incitement to violence and violence against persons, based on religion or belief, as set forth in the resolution.

* A/72/150.
** The present report was submitted after the deadline in order to reflect the most recent developments.

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I. Introduction

1. The present report is submitted pursuant to General Assembly resolution 71/195, in which the General Assembly requested the Secretary-General to submit at its seventy-second session a report that included information provided by the United Nations High Commissioner for Human Rights on steps taken by States to combat intolerance, negative stereotyping, stigmatization, discrimination, incitement to violence and violence against persons, based on religion or belief, as set forth in the resolution. The report provides a summary of contributions received from 21 Member States and 2 intergovernmental organizations in response to a note verbale dated 10 April 2017.[1]

II. Information received from Member States

Algeria

2. Algeria reported that its Constitution stipulates that fundamental freedoms and human and citizen rights are guaranteed. The Constitution provides that any form of physical or moral violence or violation of dignity is prohibited (art. 40); offences against rights and freedoms, as well as physical or moral harm to the integrity of human beings, are punishable by law (art. 41); and freedom of worship and freedom of opinion shall be inviolable, and freedom of worship is guaranteed by law (art. 42). These constitutional freedoms have been implemented through legislative measures, with a view to enabling citizens to freely practise their religion.

3. It is within that framework that order No. 06-03 of February 2006 provides rules for the exercise of religious rites for non-Muslims. Article 2 of the order states that "the Algerian State, whose religion is Islam, guarantees freedom of worship, within the framework of respect for the Constitution, the present order, the laws and regulations currently in force, public order, morality, the rights and fundamental freedoms of third parties. The State also guarantees tolerance and respect between the different religions." Article 3 of the order affirms that the State shall protect religious associations of non-Muslims.

4. Article 8 of the decree entitled "Functions and deontology of the mosque" states that the mosque provides an orientation function, which consists of ordering the good and proscribing the evil, and that the mosque contributes in particular to the strengthening of religious and national unity through religious orientation and preaching. Article 12 of the decree prohibits the exploitation of mosques to harm individuals or groups. The Ministry of Religious Affairs and Endowment employs central inspectors on mission throughout the national territory to identify any practice contrary to the deontology of the mosque.

5. Article 4 of the Criminal Code prohibits discrimination against a person or a group based on religious affiliation. The creation of religious associations, which are entitled to organize collective worship, is subject to the same regulation.

6. Regulatory and organizational measures have been implemented by the Government, including improvements to training programmes and teaching methods for religious officers to enable them to combat different forms of violent extremism. There is also follow-up to and supervision of religious discourse delivered in mosques to counter and guard against extremist concepts.

[1] The full texts of the submissions are available for consultation at the Office of the United Nations High Commissioner for Human Rights.

Armenia

7. Armenia reported that a referendum was held in December 2015 on constitutional amendments to provide more comprehensive and effective protection of human rights in Armenia. According to article 29 of the Constitution, any discrimination based on any ground, such as sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, or membership in a national minority, shall be prohibited. Article 56 prescribes that everyone shall have the right to preserve his or her national and ethnic identity and that persons belonging to national minorities shall have the right to preserve and develop their traditions, religion, language and culture.

8. Article 41, as amended, stipulates that everyone shall have the right to freedom of thought, conscience and religion. That right shall include the freedom to change religion or belief, either alone or in community with others, and in public or in private, and the freedom to manifest one's religion or belief in preaching, religious ceremonies, other rites of worship or in other forms.

9. In order to fill relevant legislative gaps, the Ministry of Justice has initiated a procedure to develop a stand-alone anti-discrimination law which, among other things, shall define the term "discrimination" and the types thereof, as well as mechanisms for proving discriminatory motivation. It shall comprehensively address all grounds of discrimination, including discrimination based on religion or belief. It is expected that a stand-alone anti-discrimination law will have been adopted by the end of 2017.

10. In May 2017, the Government adopted its plan of action for the period 2017-2019 with regard to the national strategy on human rights protection, which also envisages the drafting of a new law on religious organizations to strengthen the guarantees for religious freedom in Armenia.

11. Armenia reported that religious organizations operate freely and construct their meeting places and places of worship. In recent years, Jehovah's Witnesses have built a new meeting house, and the Yazidi community has built the world's second largest cathedral complex. A new Yazidi temple, which will be the largest in the world, as well as a museum and a seminary, are also under construction in the village of Akna Lich.

Austria

12. Austria reported that, as Chair of the Organization for Security and Cooperation in Europe in 2017, Austria had organized various events on tolerance and non-discrimination at the international level. Austria also continued to support several projects, including the development of a toolkit by the Office for Democratic Institutions and Human Rights for the security of Jewish communities. In 2016, Austrian contributions helped to finance a project on the representation of Muslims in the media. Representatives of Austria have participated in a number of related events and meetings, including a conference on tolerance and diversity and a meeting on the role of religion and dialogue in preventing violent extremism.

13. A task force on dialogue of cultures and religions supports dialogue and interreligious civil society initiatives, such as a platform of churches and religious communities, established at the initiative of the religious communities of Austria. In September 2015, the platform drafted a joint declaration on freedom of religion, the protection of religious minorities, and the rejection of violence in the name of religion. Austria hosts the King Abdullah bin Abdulaziz International Centre for Interreligious and Intercultural Dialogue, in Vienna.

14. At the national level, dialogue between the Government and the legally recognized churches and religious communities of Austria is institutionalized, as demonstrated by the ability of these communities to provide opinions on draft laws and regulations and their close cooperation with the Government on matters of education and health. The Federal Chancellery has hosted interreligious dialogues and the State Secretary has organized a roundtable with religious communities and a workshop to support the fight against hate speech on the Internet. The State Secretary has endorsed the publication of guidelines against hate postings and the work of the platform "CounterACT!". The campaign Together: Austria recruits "integration ambassadors" to visit schools, civil society organizations and workplaces.

Azerbaijan

15. Azerbaijan reported that, in 2016, about 600 awareness-raising events were organized by the State Committee on Religious Associations of the Republic of Azerbaijan in cooperation with institutions, other countries and regional and international organizations. A legal framework has been established to prevent discrimination based on nationality, race and religion. Laws on freedom of religious belief and on the fight against religious extremism have been adopted to regulate the activities of religious associations, to ensure implementation of the right to freedom of religious belief and to fight against religious extremism.

16. In accordance with the decree by the President, financial aid is regularly allocated to the Caucasus Muslims Board, the Baku and Azerbaijan eparchy of the Russian Orthodox Church, the mountain Jewish religious community, the European Jewish religious community, the apostolic prefecture of the Catholic Church and the Albanian-Udi Christian religious community.

17. The fourth World Forum on Intercultural Dialogue was held from 4 to 6 May 2017 in Baku. Azerbaijan actively cooperates with the United Nations Alliance of Civilizations and is an active member of its Group of Friends. The seventh global forum of the Alliance, on the theme "Living together in inclusive societies: a challenge and a goal", was held from 25 to 27 April 2016 in Baku.

18. Azerbaijan noted that there are presently more than 2,000 mosques, 13 churches and 7 synagogues in the country. There are also houses of worship and Islamic, Christian and Jewish religious educational institutions, as well as Hebrew language courses to teach the Hebrew language and courses on Jewish religion and culture. As at May 2017, 760 religious communities had been registered. The Government noted that it had created favourable conditions for Muslim and non-Muslim communities to celebrate their respective religious holidays and ceremonies.

Burundi

19. Burundi reported that there had not been any reports of abuse or acts of discrimination based on belief, religious beliefs or practices, or acts of incitement to religious hatred that threatened the spirit of tolerance and respect for diversity.

20. Articles 31 and 32 of the Constitution guarantee the right to freedom of expression, religion, thought, conscience and opinion; the right to freedom of assembly and association; and the right to establish organizations in accordance with the law. The legal framework for religious freedom is governed by the same national legislative framework that defines the conditions necessary for the registration and functioning of non-profit associations. All religious groups are obliged to register with the Ministry of the Interior.

21. Burundi reported that it subscribed to the principle of secularism of the State and respected all religious confessions and treated them equally and without discrimination. All religious groups have the right to profess and teach their faith, by means of radio, television and the press, to provide training in schools and to construct hospitals. The Government also guarantees religious groups the freedom to construct religious buildings and transfer funds into and out of the country, without State interference. The Ministry of Human Rights conducts annual training and awareness-raising sessions for the citizens of Burundi.

22. There are frequent meetings and exchanges between the Government, through various national institutions, and representatives of the different religious confessions and groups. In addition, religious feasts and holidays of various religious groups are observed. The Government stated that it was working to ensure that representatives of all sectors of society were present in public institutions.

23. With regard to the adoption of measures to prohibit incitement to imminent violence based on religion or belief, article 410 of the Penal Code provides for sanctions in cases of violence, insults, threats and disturbances to freedom of worship and freedom of conscience and their free exercise.

Cuba

24. Cuba reported that new institutions and religious organizations had obtained legal recognition as a guarantee of their rights and those of the people who profess religious beliefs. Religious institutions have increased their presence throughout the country and increased their activities locally, nationally and internationally. There are about 600 religious institutions and organizations, including those of the Baha'i, Buddhist, Christian, Islamic, Jewish, Spiritualist and Afro-Cuban religious communities. All of them have temples and houses of worship and carry out other activities on a regular basis and without impediment. The construction, repair and reconstruction of new temples and social headquarters are also facilitated.

25. A legal provision was recently approved to enable the registration or updating of records in the property register for the properties of religious institutions and associations, including those for which no documentation certifying ownership is available, but for which ownership is evident.

26. The governmental and political authorities of the country, as well as those of several religious institutions, encourage interreligious activities and meetings on topics of common interest to foster dialogue between adherents of different religions, such as that organized by the Interreligious Platform of Cuba, in 2015. Results of these dialogues and meetings are publicized through government media and the publications of the religious institutions that function in the country.

27. In previous years, the country hosted the VI Assembly of the Latin American Council of Churches and the VII World Congress of the International Spirit Council, and it has received visits from high-ranking international religious figures, such as the historic meeting in Havana in 2016 between Pope Francis and Patriarch Kirill of Moscow and All Russia, which led to the issuance of a joint declaration.

Denmark

28. Denmark reported that the Constitution provides for freedom of religious belief and assembly, while Danish law prohibits any kind of discrimination based on religion or belief.

29. The Constitution guarantees the right to form religious communities without prior approval of the State. Approval is necessary only if the religious community or congregation wants to obtain certain special advantages, such as the right to perform

marriages with civil validity in Denmark or the possibility of deducting contributions from its annual tax declaration. Pursuant to the Constitution, the Evangelical Lutheran Church shall be the established church of Denmark and, as such, is awarded special status and supported by the State. The Government noted the importance of protecting the rights of religious communities other than the Evangelical Lutheran Church. A committee on religious communities drafted a report on the possibility of introducing comprehensive regulation on the status of the other religious communities. The report included criteria and procedures for granting acknowledgement and the legal effects thereto.

30. When carrying out a criminal investigation, the police are obliged to follow national legislation prohibiting any kind of discrimination on the basis of, inter alia, faith, race, skin colour, national or ethnic origin or sexual orientation. At the police academy, students are taught to combat and prevent ethnic and religious profiling and to avoid discrimination of any kind when conducting investigations and other law enforcement activities.

31. The national police have initiated national monitoring of hate crimes to provide knowledge about the actual extent of hate crimes and related developments, and it issues an annual publication on reported hate crimes. The first training day for law enforcement officers on dealing with hate crimes was held in February 2017 and will, in the future, be offered as continuing education for law enforcement officers from police districts. Similarly, the Director of Public Prosecutions has the main responsibility for the training and education of the entire national prosecution service. Guidelines on the processing of cases of hate crimes by both prosecutors and police officers have recently been revised.

Honduras

32. Honduras reported that the Criminal Code had established various provisions that penalized hate crimes, including Legislative Decree No. 23-2013 of the Penal Code, which classifies hate as a general aggravating factor. Article 321 of the Penal Code provides for punishment of three to five years and a fine of 30,000 to 50,000 lempiras for any person who arbitrarily and illegally obstructs, restricts, diminishes or impedes the exercise of individual and collective rights or denies the provision of a professional service on several grounds, including religion.

33. National human rights institutions, non-governmental organizations, religious bodies and the media promote tolerance and respect for religious and cultural diversity, as well as awareness of different cultures and religions or beliefs. Education in the promotion of tolerance, including acceptance and respect for diversity, religion and culture, especially in relation to religious expression, is being stressed.

34. The Ministry of Education is implementing a national human rights education plan that includes actions to counter religious intolerance. The creation of collaborative networks to consolidate mutual understanding, promote dialogue and stimulate constructive action towards common policy objectives is being encouraged.

Italy

35. Italy reported that Act No. 115 of 16 June 2016 introduced a penalty of imprisonment from 2 to 6 years in cases where propaganda, instigation and incitement are based in whole or in part on the denial of the Holocaust or crimes of genocide, humanity and war crimes, in accordance with articles 6, 7 and 8 of the Statute of the International Criminal Court.

36. The Committee for the restoration of Block 21 of the Museum of Auschwitz-Birkenau, established by the Office of the President of the Council of Minister and composed of representatives from ministries and the main associations of Jews and ex-deportees to Nazi camps, proposed to the President of the Council a complete and comprehensive project for the restoration of Block 21 and for planning a new Italian exhibition there. In 2016, the Committee had fruitful exchanges with Museum management to prepare an agreement on the above-mentioned exhibition. On the occasion of the Plenary Assembly of the International Holocaust Remembrance Alliance, in November 2016, Italy was appointed to the presidency of the Alliance for 2018.

37. On the occasion of the commemoration of Holocaust Memorial Day, on 27 January 2017, the Presidency of the Council of Ministers, together with the Union of Jewish Communities, organized in Rome a round table on the theme "Law and legality: the weapons of democracy — from the memory of the Shoah to an integration of human rights in the European Union". The Presidency of the Council, together with a committee to coordinate celebrations in remembrance of the Holocaust, has granted patronage to different institutional events in Italy that have been organized to commemorate Holocaust Memorial Day.

38. In addition, Judgment No. 67/2017 of the Constitutional Court has rendered unlawful part of article 2 of Venetian Regional Law No. 12/2016, which had introduced the obligation to use the Italian language in agreements governing all activities relating to religious services. The Court highlighted that Italy recognized the principle of freedom of religion and confessional pluralism; that free exercise of worship was an essential aspect of freedom of religion that applied equally to all people and to all religious denominations regardless of whether they had entered into an agreement (*Intesa*) with the State; and that the opening of places of worship was protected by article 19 of the Constitution and could not be subject to conditions contained in agreements with the State.

39. The interministerial commission for agreements with religious denominations has concluded negotiations on the drafting of two texts, pursuant to article 8 of the Constitution, with the Romanian Orthodox Diocese of Italy and the Church of England in Italy, respectively.

Jordan

40. Jordan reported that at no time had there been recorded an issue based on a purely racial basis, given the country's ability to integrate all groups under one umbrella, even if their intellectual, ideological or ethnic systems were different.

41. Article 6 of the Constitution provides that Jordanians are equal before the law, and there is no discrimination allowed in terms of rights and responsibilities, regardless of race, language or religion. The Constitution also guarantees equal rights for all persons, whether citizens or non-citizens, and guarantees many rights that concern education, work, freedom of assembly, the formation of political parties, associations and trade unions, freedom of opinion and expression, and freedom of religion and belief.

42. Article 101 of the Constitution accords everyone the right to gain access to the courts, regardless of race, colour, religion or nationality. Jordanian legislation contains many provisions that condemn the dissemination of ideas based on racism and hatred, incitement to acts of violence, and acts that provoke violence against any race, sex or religion or that promote or assist any discriminatory activity.

43. Article 150 of the Penal Code stipulates that all writing, speech or action intending or resulting in the provocation of sectarian or racial prejudice or

incitement of conflict between sects and various elements of the nation shall be punishable by imprisonment for a period of six months to three years and a fine that does not exceed 50 dinars. Similarly, article 20 of the Audiovisual Media Law No. 26 of 2015 stipulates that licensees are obligated to: (a) respect human dignity, personal privacy, the freedoms and rights of others and pluralism of expression; and (b) not to broadcast material that offends public decency, incites hatred, terrorism or violence, triggers religious, sectarian or ethnic strife, harms the economy and national currency or undermines national and social security.

44. The National Centre for Human Rights promotes the principles of human rights in Jordan and non-discrimination against citizens based on race, language, religion or gender, in accordance with the rule of law. The Centre works through various means to guide citizens in learning about their rights, assists them in taking measures to safeguard those rights in the event of an attack, and covers losses incurred during an attack if it is proven that the aggressor is unable to pay restitution.

Malta

45. Malta reported that the National Commission for the Promotion of Equality, pursuant to the Equality for Men and Women Act, worked to safeguard equal treatment with respect to religion or belief in employment, education and vocational guidance, as well as by banks and financial institutions. Its Commissioner is empowered to investigate complaints of alleged discrimination in the areas that fall within the Commission's remit. Six reported complaints on the grounds of religion or belief were investigated between 2013 and 2016.

46. The Commission is also mandated to provide training on diversity, equality and non-discrimination, including with respect to religion or belief, to different groups of stakeholders, including students, employers, employees in the private sector and public officers. It regularly publishes articles and press statements in printed media, participates in television and radio programmes and utilizes social media to pass on targeted messages to a wide range of audiences. Its website is a source of information on its mandate and functions.

47. Following a public consultation held in 2015 by the Ministry for Social Dialogue, Consumer Affairs and Civil Liberties, two bills, on equality and on a human rights and equality commission, were presented to Parliament for the first reading in December 2016. Once enacted, the bills will restructure and strengthen the national legal framework on human rights and discrimination by transforming the National Commission for the Promotion of Equality into a human rights and equality commission that is answerable to Parliament, with a wider mandate and sanctioning powers.

Mauritius

48. Mauritius reported that section 16 of the Constitution provides that no law shall make any provision that is discriminatory, either of itself or in its effect, and that no person shall be treated in a discriminatory manner on the grounds of race, caste, place of origin, political opinion, colour, creed or sex by any person acting in the performance of any public function conferred by any law or otherwise in the performance of the functions of any public office or any public authority.

49. Section 17 of the Constitution provides that a citizen who alleges that his or her right under section 16 is being or is likely to be contravened may submit an application to the Supreme Court for redress. Under section 11 (1), no person shall be hindered in the enjoyment of his or her freedom of conscience, and that freedom includes freedom of thought and religion, freedom to change his or her religion or

belief, and freedom to manifest and propagate, either alone or in community with others, and both in public and private, his or her religion or belief through worship, teaching, practice and observance.

50. Several related laws have been enacted by Parliament over the years that make it a criminal offence to discriminate against a person on the basis of race, religion or place of origin. The Equal Opportunities Act (2008) prohibits direct and indirect discrimination on the grounds of a person's age, caste, colour, creed, ethnic origin, impairment, marital status, place of origin, political opinion, race, sex or sexual orientation.

51. The Ministry of Arts and Culture encourages the creation of collaborative networks to build mutual understanding and promotes intercultural dialogue to enhance tolerance for cultural diversity. The Committee of the Wise, composed of leaders of the main religions present in Mauritius, regularly meets to discuss prevailing issues of national importance, with a view to maintaining harmony among the country's multi-faith population. The media play an important role as watchdog and immediately denounce acts of intolerance.

Philippines

52. The Philippines reported that the 1987 Constitution the country provided two guarantees of religious freedom based on the principle of separation of Church and State under the establishment clause and the free exercise clause.[2] The establishment clause prohibits the establishment of a State religion and the use of public resources to support or prohibit a religion. As a secular State, the Philippines protects religious rights, and all religious groups are equal under the law.

53. In a report on international religious freedom issued in 2016, the Office of the President's Task Force on Interreligious and Intercultural Concerns stated that, from a review of available data, in coordination with the Presidential Human Rights Committee, there were no reported cases of abuse or restriction on religious freedom, religious groups, religious institutions, or religious activities and practices.

54. The Revised Penal Code punishes any public officer or employee who prevents or disturbs the ceremonies or manifestations of any religion (art. 132) and penalizes any person who performs acts offensive to the feelings of the faithful in a place devoted to religious worship or during the celebration of any religious ceremony (art. 133). The Civil Code makes any public officer or employee or any private individual liable for damages for directly or indirectly obstructing, defeating, violating or in any manner impeding or impairing the freedom of religion of another person (art. 32).

55. The Constitution ensures and mandates unconditional tolerance, without regard to whether those who seek to profess their faith belong to the majority or the minority. It provides that the free exercise and enjoyment of religious profession and worship shall be without discrimination or preference. As reflected in a decision of the Supreme Court, there is a policy of benevolent neutrality, which allows for the accommodation of religion under certain circumstances.[3] Several laws have been enacted to accommodate religion in the Philippines, and major religious days have been declared national holidays. The Government has also continued to recognize the needs of the faithful to fully observe their respective religious traditions and celebrations.

[2] See the decision of the Supreme Court in *Imbong v. Hon. Ochoa, Jr.*, G.R. No. 204819, 8 April 2014.

[3] See the decision of the Supreme Court in *Diocese of Bacolod v. Commission on Elections*, G.R. No. 205728, 21 January 2015.

56. The Omnibus Election Code expressly prohibits the political participation of religious groups that seek to achieve their goals through violence, bans their intervention in elections, prohibits them from raising and donating to campaign funds, and prevents clergy from coercing subordinates to vote for or against any candidate.

Qatar

57. Qatar reported that the mission of the Doha International Centre for Interfaith Dialogue was aimed at creating better flows and networks of communication between groups and individuals that form the human family. The main role of the Centre is to spread through dialogue a culture of acceptance of others and peaceful coexistence among followers of different religions.

58. The Centre provides opportunities for scholars and clergy to present exemplary stories from their respective scriptures to provide guidance on how to address challenges. Clergy and church officials based in Doha are invited to advise the Centre on the improving communication between Qatari and non-Qatari residents, and non-Qatari residents are given a platform to express their concerns regarding their well-being.

59. The Government and the Centre hosted, in Doha on 24 and 25 March 2014, the fourth session of the Istanbul Process for Combating Intolerance, Discrimination and Incitement to Hatred and/or Violence on the Basis of Religion or Belief. The session focused on advancing religious freedom through interfaith collaboration and brought together interfaith and relevant government experts, thereby contributing to collaborative partnerships between the Government and civil society in the promotion of those goals.

60. The Centre has also annually hosted the Doha Interfaith Conference for the past 12 years, under the patronage of Emir of Qatar and with support from the Ministry of Foreign Affairs. The most recent Conference was held on 16 and 17 February 2016 on the theme "Spiritual and intellectual security in light of religious doctrines".

61. In 2017, the Centre has continued to support and organize various activities aimed at strengthening constructive dialogue among followers of different religions in order to better understand how the principles of religious teachings can be harnessed in the service of humanity, based on mutual respect and recognition of differences. The activities have included youth forums, football tournaments, radio programmes, book fairs, cultural and literary round tables, training forums and cultural dialogues in Doha and around the world.

Romania

62. Romania reported that the Constitution guarantees religious freedom for all Romanian citizens, and in accordance with article 30, paragraph 7, any instigation to national, racial, class or religious hatred and any incitement to discrimination shall be prohibited by law.

63. Article 13 of Law No. 489/2006, on religious freedom and the general status of religions in Romania, stipulates that relations between religions and between religious associations and groups shall be based on mutual understanding and respect. The Law guarantees religious freedom at the individual and the institutional levels for those who are members of religious associations and recognized religions. Furthermore, Romania has adopted related legal instruments such as Decree No. 137/2000, on preventing and penalizing of all forms of discrimination, and Law No. 504/2002, on audiovisual media.

64. At the time of reporting, the State Secretariat for Religious Affairs had not received notifications concerning intolerance, negative stereotyping, stigmatization, discrimination or incitement to violence against persons on grounds of religion from any individual or recognized religion.

65. The State Secretariat has organized and supported, including financially, numerous internal and international events with the purpose of promoting interreligious and interconfessional dialogue. The Consultative Council of Religions in Romania was established in 2011 for the purpose of consultation on all social issues of common interest, the promotion of solidarity and cooperation among the recognized religions and the prevention of interreligious and interconfessional conflicts among recognized religions. One of its main objectives is the prevention of and mediation in cases of possible interconfessional and interreligious disputes, including by discouraging and rejecting all forms of extremism.

Russian Federation

66. The Russian Federation reported that equality and non-discrimination on the grounds of sex, race, nationality, language, origin, religion and belief were among the fundamental principles of the Russian legal system. These principles create a foundation for the standard-setting activity of public authorities at all levels. Normative acts designed to prevent incitement to racial and religious hatred and to suppress radical and extremist activity play an important role in combating intolerance. The Criminal Code provides for criminal liability for extremist acts.

67. Anti-discrimination measures are also included in legislation that regulates human rights in the spheres of education, labour, health care, legal proceedings, social protection and culture. All forms of restrictions on and violations of rights based on social, racial, national, language or religious grounds are prohibited. The main principles of religious freedom are set out in the Constitution.

68. In accordance with Presidential Decree No. 1313 of 13 October 2004, the registration of religious organizations and general supervision of their activities is carried out by the Ministry of Justice. By the end of 2016, 29,840 religious organizations, representing 60 confessions and religions, had been registered. Interaction between religious associations and public authorities takes place at the federal and regional levels.

69. One of the largest non-governmental organizations engaged in interreligious dialogue is the Interreligious Council of Russia, established in 1998. The Council focuses on coordinating the efforts of religious associations in the spheres of peacemaking, developing relationships, strengthening public morality, preserving and recreating spiritual and cultural heritage, interreligious dialogue on important issues, and cooperation with international interreligious organizations.

70. In order to equally respect the traditional religions that exist in the Russian Federation, Federal Law No. 314-FL of 23 November 2015 was adopted. According to the Law, the texts of world religions that constitute their spiritual basis, as well as content and quotations taken therefrom, cannot be deemed extremist materials.

Slovakia

71. Slovakia reported that, effective 1 January 2017, an amendment to Act No. 300/2005 of the Criminal Code, on the concept of extremist crimes, had been adopted. Specific motives were also newly defined and henceforth include hatred against a group or an individual on the basis of their actual or putative religion or belief. The amendment also defined what constitutes extremist material, which includes written, graphical, video, audio or audiovisual recordings that promote,

encourage or incite hatred, violence or unreasonable treatment of a group of people or an individual based on race, nation, nationality, ethnic group, origin or religion.

72. In order to combat extremism, the Ministry of Justice established the function of court experts to assist with the detection, investigation and prosecution of bias-motivated criminal offences, including crimes motivated by hatred against persons for their religion or belief. Information is being gathered, including with respect to data collection, on criminal offences committed because of hatred towards groups or individuals based on their real or supposed political persuasion or religion.

73. The Ministry of the Interior has implemented a project on the effective monitoring, detection and clarification of manifestations of violent extremism in cyberspace with a view to reducing the risks of extremist propaganda dissemination on the Internet and to reducing radicalism within the most vulnerable groups. Four training sessions intended for police officers were held in September and October 2016 and focused on the problem of Internet-based extremism. The Church Division of the Ministry of Culture continues to organize educational seminars for churches and religious associations to address and combat extremism in the context of human rights.

74. In cooperation with the Office for Democratic Institutions and Human Rights, Slovakia has been working on the design and implementation of programmes to train law enforcement officers and prosecutors in combating hate crimes, to be implemented in 2017 by the Judicial Academy and the Police Academy.

Spain

75. Spain reported that a framework for interministerial cooperation to combat intolerance had been created to provide training and raise awareness of racism, xenophobia and other forms of intolerance. The training, aimed at groups of professionals involved in the fight against intolerance, including the police, judges, prosecutors and other civil servants, is intended to improve the collection and analysis of data on complaints filed, investigations processed, prosecutions initiated and sentences issued for crimes and/or misdemeanours motivated by discrimination or hatred.

76. In June 2016, a framework monitoring committee was established and a number of working groups were set up to focus on the collection of statistical data on incidents of hate, analysis and follow-up on rulings related to racism, racial discrimination, xenophobia and other forms of intolerance, hate speech and training. In 2017, a number of practical guides on hate crimes, data collection and monitoring were issued.

77. The national interlocutor for the European Union high-level group on combating racism, xenophobia and other forms of intolerance participated in the second follow-up exercise on compliance with the code of conduct on countering illegal hate speech online adhered to by Internet platforms such as Twitter, YouTube and Facebook, and in the work of the European Commission on the elimination of hate speech online, which has resulted in the reporting of 2,600 cases throughout Europe.

78. A project on training and awareness-raising that guides teachers and the educational community in the prevention and detection of racism, xenophobia and related intolerance has been implemented since 2015. A support manual for the prevention and detection of racism, xenophobia and intolerance has been published as a working tool, and information leaflets in Basque, Castilian, Catalan, Galician and English have been disseminated to schools and other key actors. A guide has been developed for health professionals to deal with victims of hate-related incidents.

Sudan

79. The Sudan reported that, in implementing the action plan set out in General Assembly resolution 71/195 for combating religious intolerance, it had taken actions and developed initiatives based on lessons learned that involved information-gathering, closer monitoring and proactive steps at the State level.

80. The Sudan has used its experience, as well as integrated and pioneering practices, in addressing cases of extremism that originate in the Sudanese context. It noted that such extremism could be overcome without depending on law enforcement, through intellectual and interactive behavioural therapy involving of community-based groups, families, scholars and specialists.

81. The Sudan has provided information about its experience in the "intellectual treatment" of the phenomenon of extremism and fanaticism and their various dimensions. Such treatment represents only one effective avenue for combating the phenomenon of extremism in Sudanese society and must be comprehensive in order to deal with the phenomenon. Different approaches are required, including individual treatment and psychological interventions, and should take into consideration the family history and childhood experiences of those who have been radicalized. It is important that community agencies, family members and individuals who are knowledgeable and competent be involved.

82. The Sudan noted the necessity of studying cases and trends in domestic radicalization and extremism to draw lessons, as well as the importance of addressing intellectual concepts, such as the issuance of fatwas and incitement against the State and society, in order to identify misconceptions. Sudan also noted the role of sheikhs and religious leaders in editing material to remove dangerous and extremist content and in addressing issues of "intellectual confusion".

Turkey

83. Turkey reported that it had undergone a reform process over the past decade and that a considerable number of those reforms concerned laws and regulations related to freedom of religion and belief. Freedom of religious belief, conscience and conviction in is guaranteed by the Constitution and relevant legislation. Pursuant to a Prime Minister's circular, citizens of different faiths have the right to enjoy and maintain their own identity and culture. In line with the decisions of the Reform Action Group, direct dialogue with non-Muslim citizens has been continuously strengthened, and periodic visits take place between government representatives and representatives of different faith groups.

84. Turkey noted that a number of religious ceremonies had been organized in monasteries, churches, mosques and synagogues, in particular following significant restoration projects. Amendments to Law No. 4928 (2003) and Law No. 3194 (1985) addressed the extension of freedoms to individuals of different faiths and beliefs with respect to the construction, maintenance and repair of their places of worship. A similar provision was also inserted into Municipality Law No. 5393 (2102), allowing municipalities to construct, maintain and restore sanctuaries and health, educational and cultural facilities.

85. Turkey stated that religious, social and cultural needs of those who sought refuge in Turkey were met regardless of their religion, sect or ethnicity. Within that context, Yazidis have been welcomed and have not been restricted in practising their religious rituals. Similarly, since the beginning of 2016, religious sermons have been delivered in Arabic during Friday prayers to 30,000 people in refugee camps and to 6,500 people outside the camps.

86. The Foundations Law No. 5737 (2008) introduced significant changes regarding various issues related to community foundations, including their activities, the receipt of financial assistance from abroad and representation in the Directorate General for Foundations, a decision-making body. A related statutory decree adopted in 2011 provided for the return of confiscated properties to community foundations established by members of different faith groups. Accordingly, 333 properties have been returned and compensation has been paid for 21 properties. Turkey indicated that properties with a value of more than 2.5 billion Turkish lira had been returned to community foundations.

Uzbekistan

87. Uzbekistan reported that it continued its consistent and systematic legislative, organizational and educational activities in order to combat intolerance and discrimination, based on religion or belief, as well as incitement to religious hatred. In June 2015, a national plan of action for the implementation of the recommendations of the Committee on the Elimination of Racial Discrimination was adopted, which envisaged the elaboration of anti-discrimination legislation and regular monitoring of the implementation of relevant laws. In August 2016, a national plan of action for the implementation of the recommendations of the Human Rights Committee and other human rights treaty bodies was approved. It consists of special measures to realize the principles of non-discrimination based on religion or belief, the right to freedom of conscience and the right to establish religious organizations.

88. In February 2017, a strategy for the five priority areas of Uzbekistan for the period 2017-2021 and a State programme on the theme "Year of dialogue with the people and human interests" were adopted. The fifth chapter of the State programme was devoted to priority areas, including religious and inter-ethnic tolerance and coexistence through continued consolidation of civil, inter-ethnic and interfaith peace and harmony in the country. It is envisaged that a programme of measures will be adopted under State policies on cooperation and interaction with religious organizations and on inter-ethnic peace.

89. Uzbekistan has carried out a number of training sessions, conferences and workshops in recent years. A round table on the theme "The rights of national minorities of Uzbekistan under governmental protection" was held in March 2016. In November 2016, an international conference on the theme "Inter-confessional dialogue and religious tolerance as the guarantee of social stability" was held at Tashkent Islamic University. In May 2017, a conference was held on the role of preventive and educational measures in combating religious extremism and terrorism.

III. Information received from inter-governmental organizations

Office of the United Nations High Commissioner for Human Rights

90. The Office of the United Nations High Commissioner for Human Rights (OHCHR) reported that it worked on various issues related to religious intolerance and emphasized that multiple forms of discrimination, in particular on the grounds of gender and religion or belief, might affect individuals and groups. The Office addresses issues of xenophobia, migration, religious freedom, religious profiling and incitement to racial, national and religious hatred. The High Commissioner for Human Rights has spoken out in various public forums, including the Human Rights Council. Upon request, the Office reviews draft anti-discrimination laws and constitutional amendments and it has been supporting several countries and

specialized bodies in developing national action plans against racism. It manages a database[4] on these issues, develops guidelines and carries out relevant training. Through its various field presences, the Office has carried out a number of activities to counter xenophobia and hate speech in Oman and Tunisia, and worked with journalists from the Russian Federation, Ukraine and West Africa.

Office for Democratic Institutions and Human Rights

91. The Office for Democratic Institutions and Human Rights reported that it worked closely with participating States members of the Organization for Security and Cooperation in Europe and civil society groups to counter hate crimes, racism, xenophobia, anti-Semitism and other forms of intolerance, including against Muslims, Christians and followers of other religions or beliefs. The Office also reviews legislation;[5] develops and promotes the use of educational materials and thematic guidelines; holds meetings on freedom of religion or belief and the fostering of mutual respect and understanding; builds capacity to address issues relating to freedom of religion or belief and hate crimes; works to improve national systems and to collect and disseminate information about hate crimes; conducts surveys on Holocaust remembrance; and carries out gender, diversity and judicial programmes.

IV. Conclusions

92. **On the basis of the contributions received, it is evident that all reporting States have constitutional provisions pertaining to freedom of religion or belief and have enacted or are in the process of enacting criminal or civil legislation to protect against discrimination and violence on the basis of religion or belief. A number of reforms and legislative amendments are being undertaken to strengthen national legal frameworks for equality and non-discrimination and bring them into line with international standards. Within many domestic constitutional and legal frameworks, incitement to violence is criminalized and often prohibited on several grounds, including on the basis of religion or belief.**

93. **While constitutional enactments and legislative provisions are the bedrock of the promotion of equality and protection against discrimination, other elements of the action plan set out in paragraphs 7 and 8 of General Assembly resolution 71/195 could be afforded greater attention. For instance, States could look to further support and fund local and national grass-roots projects aimed at increasing capacity-building, social cohesion, interfaith dialogue and youth forums and exchanges, as well as those aimed at increasing the participation of religious leaders and groups and affected communities. It will also be important to address religious profiling and to ensure that public administrations are representative.**

94. **States noted that Governments and political officials had spoken out against religious intolerance. This type of action at the highest level possible, including on the part of religious officials, is critical to countering negative stereotyping and stigmatization. Religious leaders are potentially very important human rights actors, as stressed by the High Commissioner.[6] It is in this context that faith-based and civil society actors participating in an OHCHR workshop in March 2017 adopted the Beirut Declaration and its corresponding 18 commitments on the theme "Faith for rights".**

[4] Available from http://adsdatabase.ohchr.org/SitePages/Anti-discrimination%20database.aspx.
[5] See www.legislationline.org.
[6] See www.ohchr.org/EN/Issues/FreedomReligion/Pages/FaithForRights.aspx.

95. **Interfaith and intercultural dialogue at the local, national, regional and international levels was underlined in several submissions. Dialogue at all levels is fundamental to addressing issues of religious intolerance. The action plan stresses the importance of collaborative networks. I welcome the fact that many of the reporting countries provide channels for communication and consultation among religious groups and communities and governmental authorities. Civil society, affected communities and all other interested stakeholders should be engaged as much as possible in the discussions and actions taken to foster inclusion and tolerance.**

96. **Freedom of religion or belief flourishes where freedom of expression is respected. Similarly, freedom of expression is essential to creating an environment in which constructive discussions about religious matters can be held. Interfaith and intercultural dialogues taking place at the local, national and regional levels, as noted in several submissions, are welcome and should be extended and further supported.**

97. **Hate crimes are a troubling feature of contemporary forms of discrimination. Many States reported on the actions they are taking in this area. Increased and improved monitoring, recording and reporting of hate crimes is needed. Data collection in this regard is critical, and I welcome the fact that a number of States have established or designated dedicated authorities to document, track and analyse hate crimes, identify patterns and trends and improve access to justice and services for victims. Such measures should be enhanced. It is important to recall that States bear the primary obligation to protect victims of human rights violations and to prevent discrimination and violence against persons based on their religion or belief. State authorities must remain vigilant and respond immediately and appropriately to all hate crimes.**

98. **Many reporting States referred to steps they had taken to combat religious intolerance and prevent violent extremism. Detailed guidance on preventing violent extremism is provided by the Secretary-General's Plan of Action to Prevent Violent Extremism (A/70/674). Notably, this guidance recommends that activities undertaken or supported by States be gender-sensitive, inclusive, tailored to the specific local context and based on a climate of trust between the State and those under its jurisdiction. The report of the High Commissioner on best practices and lessons learned on how protecting and promoting human rights contribute to preventing and countering violent extremism (A/HRC/33/29) also provides important guidance. It underscores that key concepts related to violent extremism should be clearly defined, in particular when they are likely to trigger measures that may interfere with human rights, for example when the terms "extremism" or "radicalization" are used in reference to non-violent activities. Efforts to combat religious intolerance are most effective when pursued in a manner that recognizes that security and respect for human rights are not competing but rather complementary goals (A/HRC/33/29, paras. 2, 61 and 64 and A/HRC/34/35, para. 105).**

99. **Religious intolerance, negative stereotyping, stigmatization and discrimination are being addressed by States through public information and media campaigns and through educational measures. The "Together" Campaign of the United Nations is aimed at countering the rise in xenophobia and discrimination, including on grounds of religion or belief.**[7]

[7] See https://together.un.org/.

100. **It is a welcome development that several States under review in 2016 have accepted the recommendations from the universal periodic review to implement Human Rights Council resolution 16/18 on combating intolerance, negative stereotyping and stigmatization of, and discrimination, incitement to violence and violence against, persons based on religion or belief (A/HRC/32/8, para. 140.21, A/HRC/32/10, para. 120.95 and A/HRC/32/15, para. 120.54). Furthermore, in March 2017, the Human Rights Council adopted resolution 34/8, a thematic resolution in which the Council recalled its resolution 16/18 and its follow-up resolutions, and resolution 34/22, a country-specific resolution in which it encouraged increasing efforts further to promote tolerance and peaceful coexistence in all sectors of society in accordance with its resolution 16/18. In addition, the Special Rapporteur on freedom of religion or belief noted in paragraph 16 of his report of January 2017 (A/HRC/34/50) that the implementation mechanism for the action plan set out in resolution 16/18 had facilitated six rounds of meetings of the Istanbul Process, organized to foster dialogue and the sharing of practical experience.**

101. **As underscored by the High Commissioner in paragraph 116 of his recent report to the Human Rights Council (A/HRC/34/35), there is a need to increase and improve the reporting of States on the action plan to the Council and the General Assembly. This is something that I would also encourage.**

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Promotion and protection of human rights: human rights situations and reports of special rapporteurs and representatives

Situation of human rights in Myanmar**

Note by the Secretary-General

The Secretary-General has the honour to transmit to the General Assembly the report of the Special Rapporteur of the Human Rights Council on the situation of human rights in Myanmar, Yanghee Lee, submitted in accordance with Human Rights Council resolution 34/22.

* A/72/150.

** The present report was not submitted on schedule because of the dates of the country mission to Myanmar (10-21 July 2017).

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Report of the Special Rapporteur on the situation of human rights in Myanmar

Summary

The present report provides an overview of human rights developments in Myanmar up to 25 August 2017. It builds on previous reports to identify key human rights challenges facing the Government and contains recommendations on the step needed to address them.

I. Introduction

1. The present report, submitted pursuant to Human Rights Council resolution 34/22, covers developments in Myanmar since the previous reports of the Special Rapporteur on the situation of human rights in Myanmar, Yanghee Lee, to the General Assembly in October 2016 (A/71/361) and to the Human Rights Council in March 2017 (A/HRC/34/67) and in an oral progress report in June 2017.

2. The Special Rapporteur conducted her sixth official visit to Myanmar from 10 to 21 July 2017. During the 12-day visit, the Special Rapporteur travelled to Rakhine, Shan and Kayin states, as well as Yangon and Nay Pyi Taw. She addressed a range of human rights issues with Union Parliament and State ministers and other stakeholders, including parliamentarians, political, religious and community leaders, civil society representatives, victims of human rights violations and members of the international community.

3. She thanks the Government of Myanmar for its continued cooperation with her mandate, although she expressed some reservations regarding the nature of this cooperation at the end of her visit.[1] In particular, she found the Government's request for an undertaking for her visit to have "nothing to do with the fact-finding mission to Myanmar" to be highly irregular in the light of her independent mandate. She hopes for better access to the places that she requests on future visits and for a more conducive environment in which to meet with non-Governmental interlocutors.

II. Consolidating democracy and creating a culture of human rights

4. The Special Rapporteur has noted previously that consolidating democracy and cultivating a human rights culture is a complex undertaking requiring political will and emphasized the importance of enhancing State accountability and addressing the apparent climate of impunity. To that end, she is heartened that the parliamentary leadership recently encouraged the engagement of parliamentarians on human rights and requested that they all attend a human rights seminar, which the Speaker opened with a speech linking human rights to democracy.

5. While the Special Rapporteur respects the right of the Lower House parliamentarians to express their dissatisfaction towards her statement concluding her July visit, she is disappointed that the full statement was not considered and nor was the context of her past statements, reports and recommendations. The Special Rapporteur has particular constraints, such as word limits, in which to acknowledge positive progress and concerning developments. Where serious human rights violations are alleged, she is duty and morally bound to raise the alarm.

6. As requested by the Human Rights Council, she has repeatedly sought to develop joint benchmarks and an implementation plan with the Government but continues to be met with very limited success.

A. Ensuring greater respect for the rule of law

7. The Special Rapporteur acknowledges the importance that the Government has placed in upholding and reinforcing the rule of law, including through strengthening

[1] See the Special Rapporteur's end-of-mission statement. Available from www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=21900&LangID=E.

legal and judicial institutions so that they may dispense justice without fear or favour and ensure respect for the rights of victims and the accused.

8. In the cases of the deceased Ko Ni and Nay Win, she was informed of concerns about the extent to which their families' lawyers are able to participate in the trial of the alleged perpetrators and the slow pace of the proceedings. The families, as the victims in this instance, have the right to be treated fairly, with dignity and respect, and for their views and concerns to be considered during the proceedings.

9. In meeting with those accused and convicted of offences or crimes in detention facilities during her visits, the Special Rapporteur noted with alarm that the majority do not fully comprehend the charges that they face or the sentences handed down and do not have legal representation. She is informed that defendants often meet their lawyers only on the first day of their trial. She recalls that, not only do the accused have the right to competent and independent legal counsel of their choosing, but that this right applies to all stages of the criminal process, including the pretrial phase. The accused also has the right to be informed of his or her right to a lawyer and the due process guarantees to which they are also entitled, irrespective of their status, whether citizens or otherwise. The Special Rapporteur is particularly concerned to receive reports that the guarantee for the accused against self-incrimination is often flouted.

10. The role of lawyers in representing the rights of their clients must be respected. The Special Rapporteur has been informed of at least three lawyers reportedly disbarred, ostensibly for having applied constitutional writs, and reiterates the need for continuing reform of the Bar Council.[2] She also understands that the procedure for applying the writ of habeas corpus, which is guaranteed in the Constitution, is particularly onerous, undermining an important tool guarding against torture and ill-treatment during pretrial detention. Other concerns include the lack of access to written judgements, impeding efforts to challenge convictions, and the apparent non-adherence to the stare decisis principle.

B. Constitutional and legislative reform

11. The Special Rapporteur previously cautioned about the difference between the rule of law and rule by law and noted the State Counsellor's reported comment that there should be "rule of just law" in Myanmar and that, where laws are not just, they should be amended. Attention is again drawn to the non-exhaustive list of laws which the Special Rapporteur has identified as being in contravention of international human rights standards[3] as well as her suggestion that a law on law-making may be considered to clarify the legislative process and enshrine systematic consultation. She noted her own strenuous efforts at obtaining clarity on the status of particular draft laws during her visit, an issue with which local actors are constantly grappling.

12. It has been suggested that consultation on draft laws is sporadic, depending on factors such as the body responsible for initiating the law and the sensitivity of the subject matter (with more sensitive matters likely to have less consultation and to be passed more quickly). For example, there appeared to have been no public consultation prior to the enactment of the Law Protecting the Privacy and Security of Citizens in March 2017, of which many of the provisions are incompatible with international human rights standards.

[2] A/HRC/34/67, para. 19.
[3] See A/HRC/31/71, annex.

13. Additionally, the mandate renewal of the Parliamentary Legal Affairs and Special Cases Assessment Commission and its continuing role of proposing new laws as well as amending or repealing existing ones alongside entities already responsible for these functions has apparently created confusion among those who seek to interact with lawmakers to give input on legislation. In particular, the Special Rapporteur is concerned that the Commission may have suggested amendments to the National Land Use Policy, which was adopted after extensive consultations and contains important guarantees. She notes information from the Government that the Commission has reviewed over 395 bills and laws.

14. Conversely, the Special Rapporteur remains concerned that there are no discernible efforts to address the four laws of the so-called protection of race and religion package adopted in 2015. Amendments are also needed to several outdated Penal Code provisions, including section 377, which criminalizes consensual same-sex conduct, and the definition of rape in section 375.

15. The Special Rapporteur remains of the view that many provisions of the 2008 Constitution impede the proper operation of the rule of law in Myanmar and that deliberation regarding constitutional reform, particularly within Parliament and by the public, must continue and not hinge on the progress and success of other national processes.

C. Safeguarding democratic space

16. The Special Rapporteur continues to be concerned for the safety and security of human rights defenders and lawyers as well as journalists and others who publicly speak out against injustices and abuses. She notes that at least one of the individuals being sought for the murder of Ko Ni remains at large and that a number of other cases, including those of Naw Chit Pan Daing and Soe Moe Tun, have yet to be solved.

17. On the occasion of World Press Freedom Day 2017 and one year into the current government's term, 14 non-governmental groups issued a scorecard on freedom of expression in Myanmar using six indicators and gave the Government a score of 8 out of 60. Myanmar has nonetheless moved up 12 places in the 2017 World Press Freedom Index, ranking 131 out of 180 countries.[4]

18. The Special Rapporteur encourages a transparent and participatory approach to drafting the right to information law currently being developed, ensuring that it is fully compliant with international standards, including the Global Principles on National Security and the Right to Information (Tshwane Principles) and the core principles endorsed by the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression.[5]

19. The Special Rapporteur finds that the protection of reputation in Myanmar national legislation appears to go beyond what is permissible under international law, effectively resulting in the criminalization of legitimate expression.[6] Contrary to international norms which call for civil liability proceedings to be the sole form of redress for complaints of damage to reputation, Myanmar criminalizes defamation.[7] Section 500 of the Penal Code allows for a fine and/or a prison

[4] See https://rsf.org/en/ranking.

[5] See A/68/362, para. 76.

[6] See Human Rights Committee, general comment 34 (2011) on the freedoms of opinion and expression, which deems criminal defamation to be incompatible with permissible restrictions to article 19 (freedom of expression) (para. 47).

[7] See A/71/373, para. 34.

sentence rise to two years, as does section 66 (d) of the 2013 Telecommunications Law following its amendment.

20. The Special Rapporteur notes that amendments to the Telecommunications Law passed by Parliament recently reduced the maximum prison sentence only in relation to section 66 (d) from three to two years — thereby making the provision bailable. The amendments retained the cognizable status of offences, allowing for arrests to be made by a police officer without a warrant, and failed to address other risks to the right to freedom of expression and opinion in other sections of the law, including the arbitrary blocking or filtering of content and arbitrary disruption to Internet access. An estimated 84 cases were filed under section 66 (d) between April 2016 and mid-August 2017, including against 18 journalists.

21. Recent cases involving the use of section 66 (d) include that of three journalists from Magway charged with posting on social media "incorrect information" regarding a government road project and that of The Voice newspaper editor for posting a satirical article mocking an army-produced propaganda film. In the latter case, despite The Voice Daily having published a note expressing regret over the army's concerns, both the editor, Kyaw Min Swe, and the columnist, Kyaw Zwa Naing (pen name, British Ko Ko Maung) who wrote the article were arrested and charged in early June. The columnist was later released since he had not posted the article online and bail was eventually granted to the editor in early August. A prominent journalist, Swe Win, charged in early March for posting an article quoting an abbot who spoke against an ultranationalist monk, Wirathu, was arrested in late July for reportedly attempting to abscond from the country when he tried to travel to Thailand for work-related reasons. He was later granted bail.

22. In another case, a local human rights activist was recently charged under section 66 (d) for streaming a satirical play about the army. Nine high school and university students involved in the play were arrested earlier in the year when it took place; and, while seven were later released, two still face trial under section 505 of the Penal Code. Despite the removal of the requirement for prior permission before organizing a public demonstration in recent amendments to the 2011 Peaceful Assembly and Peaceful Procession Law, arrests are reportedly still occurring frequently under this law.

23. The Special Rapporteur has repeatedly flagged that the 1908 Unlawful Associations Act is not in conformity with international standards and notes the ongoing debate on it in both houses of parliament. She is especially concerned at the recent use of section 17 (1) of the Act against three journalists arrested in northern Shan for covering a drug burning ceremony by the Ta'ang National Liberation Army to mark International Day against Drug Abuse and Illicit Trafficking. She regrets that the authorities did not allow her access to Hsipaw Prison, where the three are detained, during her visit. She also reiterates her concern over the case of Dumdaw Nawng Lat and Langjaw Gam Seng, whom she visited in Lashio Prison, and who face charges under that provision as well as defamation charges under section 505 of the Penal Code after speaking to media about the bombing of their church.

24. The Special Rapporteur welcomes the release of three prisoners convicted under section 66 (d) of the Telecommunications Law from among 1,883 amnestied in April marking the new year, and a number of others, including Zaw Zaw Latt and Pwint Phyu Latt, from among 259 released in May to mark the Union Peace Conference. She calls for the release of the remaining political prisoners — estimated to number at least 50 awaiting trial under remand, including Khine Myo Htun, who has now been detained for over a year while his trial continues, and 39 already convicted. She further notes an estimated 136 individuals who are facing charges for exercising their rights and awaiting trial outside of prison.

25. The Special Rapporteur also welcomes the removal of 275 nationals and 385 foreigners from the so-called "blacklist" but understands that 178 nationals and 3,893 foreigners remain on it. While noting information received that blacklisted persons can ask to be removed from the list, she is concerned over the continued lack of transparency on its functioning.

III. Ensuring sustainable development for all

A. Economic and social rights

26. The Special Rapporteur expresses her concern about seasonal floods which have led to at least three deaths and caused the temporary evacuation of over 200,000 people. She also reiterates her concern at the impact of Cyclone Mora in May, causing destruction in particular in Rakhine and Chin States and Ayeyarwaddy Region. She encourages all stakeholders to work together, with the Government in the lead, to ensure that all individuals can access sufficient assistance and to further strengthen flood mitigation and disaster response efforts.

27. The Special Rapporteur welcomes the launch of the National Health Plan (2017-2021) and its focus on universal health coverage. She also notes the development of the first-ever Water, Sanitation and Hygiene for All (WASH) Strategy and Investment Plan (2016-2030). She encourages efforts to operationalize both plans and to strengthen health-care systems across the country, with particular efforts to improve the supply of health-care workers to understaffed areas.

28. Malnutrition is a problem facing several areas, with approximately one third of children under five in Myanmar showing signs of stunting and 7 per cent of wasting.[8] Stunting rates are highest in Rakhine State, with Chin, Kayah and Shan States and Ayeyarwaddy Division also having high levels. The Special Rapporteur encourages efforts to tackle malnutrition in all areas and notes the recommendation by the Advisory Commission on Rakhine State for a comprehensive state-wide programme to combat malnutrition as well as to lift the restrictions on freedom of movement which, among other things, impinge on the livelihood opportunities of Muslim communities.

B. Business and human rights and land rights

29. Development is integral to the future prosperity of Myanmar but it is important that development proceeds in a sustainable way which respects local communities' rights. During her visit, the Special Rapporteur met civil society and communities affected by the three special economic zones in Yangon, Dawei and Kyaukphyu, which she visited. For all three zones, communities reported that initial phases or preparatory work had had a largely negative impact on their lives, with many of those affected still suffering negative consequences. Civil society organizations have also raised concerns that the projects have not been implemented in accordance with the law.

30. For all projects going forward, it will be important to ensure that programmes proceed in the correct order and to a high standard, with environmental impact assessments being carried out before the issuance of permits to developers and prior

[8] Myanmar Ministry of Health and Sports and Demographic and Health Survey programme, "Myanmar Demographic and Health Survey 2015-2016: key indicators report" (September 2016). Available from http://themimu.info/sites/themimu.info/files/documents/Survey_Demographic_Health_Survey_2015-16.pdf.

to land acquisition and construction work beginning, as required by national law. Only after this should resettlement plans be drawn up and completed before any land is confiscated or communities moved, as required by the environmental impact assessment procedures. In accordance with international standards on resettlement, incorporated into the legal framework of Myanmar for special economic zones, all of these phases should be carried out in a transparent way, with communities receiving continuous information, being genuinely consulted and given the opportunity to suggest alternative options. Several communities told the Special Rapporteur that they understood that the country needed to develop but felt that they would pay the price, with no benefits seen by their community. Efforts to ensure that local communities attain tangible benefits could help change this sentiment. Steps should also be taken to ensure access to remedy through appropriate mechanisms for those previously negatively affected by special economic zones. She recognizes that many bodies may face limited capacity, but would encourage them to seek international assistance to ensure that projects are planned, reviewed and developed in accordance with the law. This approach may slow projects down in the short term, but will reap dividends in the future by helping to avoid some of the problems faced in the past and help ensure that projects are sustainable and benefit the people of Myanmar.

31. While special economic zones have a specific legal framework governing investment, national laws on environment and labour still apply in full, and many of the issues arising in special economic zones are similar to other development projects. For example, the Special Rapporteur met individuals concerned about a proposed coal plant in Kayin State, where little information is currently available to communities on possible impacts. Madei community members in Rakhine State also felt that they received few benefits from the port and pipeline built on the island and instead faced severe difficulties as boats, including for fishing and transportation, are prohibited for several days when tankers dock at the port.

32. Land confiscation is a major concern of communities affected by special economic zones and also of thousands of others across the country. The Special Rapporteur was told by one individual in Kyaukphyu that, before losing his land, he could feed his family and sell the surplus to raise income but that, following its confiscation, forced to take sporadic work, he is struggling to make ends meet. She received similar testimonies from Shan and Kayin States during this visit, and understands that there are similar cases across the country. She notes efforts by the Central Review Committee on Confiscated Farmlands and Other Lands and local level bodies to tackle the issue and the return of 14,810.5 acres of land so far. However, with over 9,000 cases pending, fully addressing all cases remains a big challenge. Communities expressed their frustration, having tried to seek redress multiple times but never receiving a response, leading some to submit multiple claims, further complicating the process. In this context, consideration should be given to keeping claimants informed of the status and progress of complaints.

33. Going forward, reform of the legal framework governing land confiscation is vital, to ensure that future confiscations are compliant with international standards and to prevent new cases. This should involve efforts towards drafting an overarching land law, fully compliant with international standards. As noted earlier, the Special Rapporteur was informed of possible revisions to the National Land Use Policy and hopes that any changes would strengthen rather than weaken the new protections it introduced. Land confiscation and forced evictions are also a phenomenon affecting urban areas in Myanmar and it is also important that such evictions, including of squatter communities, are fully compliant with international standards.

34. The Special Rapporteur has previously welcomed the temporary suspension on the issuance and renewal of mining licences until the legal framework is reformed. She notes that, to fully benefit from this decision, amendments to legislation, including amendments to the Gemstone Law being considered by Parliament, must contain extensive safeguards to protect the environment, guard against corruption, ensure transparency and protect the rights of communities and miners. She believes that clashes in mining areas indicate a link between the conflict and natural resources and encourages practical steps to address this, including discussions on ways for the benefits from extractive industries to be shared more equitably as a foundation for lasting peace.

35. The Sustainable Development Goals will be particularly important for Myanmar in its development efforts over the coming years. The Special Rapporteur emphasizes that human rights principles and standards are strongly reflected in the Goals and that addressing human rights issues will be central to realizing many of the goals. She encourages early efforts to tackle these issues, many of which have been raised in the present and other reports. She notes that the Goals call for increased involvement of the private sector in the implementation of the 2030 Agenda for Sustainable Development, and, while this presents important opportunities for progress, a necessary corollary is to ensure adequate safeguards to avoid and address adverse impacts on human rights.

IV. Towards national reconciliation and peace

A. Conflict-related rights violations and the peace process

36. The Special Rapporteur is extremely concerned at the ongoing escalation of conflict in Kachin and Shan States, allegations of serious rights violations and decreasing humanitarian access. The Special Rapporteur had hoped to visit several affected areas to meet with communities but requests to travel to Kutkai, Muse and Namkhan and alternatively to Namtu townships were all refused. In Shan State, she was also unable to visit any locations that she proposed outside of Lashio.

37. The Special Rapporteur was told by groups working with affected communities that reports of serious human rights violations are increasing. These include reports of killings, torture and even the use of human shields by the Tatmadaw,[*] allegedly in some cases accompanied by threats of further violence if incidents are reported. In Shan State, 59 protection incidents were logged, affecting 23,600 persons, and in Kachin State 56 incidents affecting 13,600 persons were logged in the first quarter of 2017. Incidents have also been reported in Kayin State. There are likely many more cases that are never reported given the climate of fear and alleged threats of reprisals for reporting violations. In several cases victims report feeling targeted for their ethnicity — for example one individual reported soldiers saying that all Kachin were either members or supporters of the Kachin Independence Army. Ethnic armed groups have also reportedly committed violations, including using human shields, forced recruitment and abductions, including of civilians of other ethnicities.

38. In two incidents, one of a video showing members of the Tatmadaw and a militia group torturing villagers which surfaced online recently but is reportedly from Shan State in 2015, and another in which three individuals were reportedly arrested and later found dead in May in Kachin State, the State Counsellor's Office

[*] See Amnesty International, "'All the civilians suffer': conflict, displacement, and abuse in Northern Myanmar" (2017).

and the Commander-in-Chief's Office, respectively, have said that they will investigate. In most other reported incidents, including a case where 18 people were detained by the Tatmadaw and burned remains later found in the area, and another where an estimated 250 people were detained in a monastery and subjected to ill-treatment, steps to investigate do not appear to have been taken. The Special Rapporteur underlines that all such allegations should be systematically investigated in a prompt, thorough, independent and impartial manner, with perpetrators held accountable. Steps should be taken to give victims secure and safe ways to report allegations.

39. There also appears to be an increasing number of cases of civilians being killed or injured by mortars or artillery shells, including an incident in July in which a two-year old child was killed. The regularity of incidents raises concerns that parties to the conflict, including the Tatmadaw, are either not distinguishing between military and civilian targets or not systematically taking precautions to protect the civilian population.

40. The Special Rapporteur is particularly concerned at the situation in the mining regions of Tanai. On 3 June, the Tatmadaw dropped leaflets which called on civilians in the specified area to evacuate because they were supposedly clearing the area due to environmental degradation caused by unauthorized mining and warning that those remaining "will be regarded as collaborators to ... insurgent groups." Following this, four out of five exit routes from the mining areas were closed and there were reports that some civilians were permitted to travel only to an area which is still affected by hostilities. The Special Rapporteur questions the necessity of evacuating such a large area and underlines that, where evacuations are necessary, civilians must be granted safe passage.

41. The total number of people who have been displaced in Tanai township is not known. Many migrant workers have left the area and approximately 1,100 displaced people have been staying at church sites in Tanai town. Over 12,000 people were newly displaced by conflict in Kachin and Shan States between January and August 2017, of whom over 3,000 subsequently returned to their homes. A large but unknown number of people were displaced from the Kokang Self-Administered Zone in March, most of whom subsequently returned. In addition, there are approximately 98,000 long-term displaced people, who have been in camps since 2011.

42. The Special Rapporteur is extremely concerned that, unlike in previous years when the United Nations and its partners had access to vulnerable civilians on both sides of the conflict line, no authorizations have been granted for over a year to deliver humanitarian assistance in non-Government-controlled areas. Access to Government-controlled areas of Kachin and Shan States is also shrinking, with many international staff unable to move beyond Lashio and Myitkyina and local partners facing additional difficulties. Access is also restricted to the Kokang Self-Administered Zone and Wa State, with little information available on the situation in these areas.

43. An estimated 120,000 people are long-term internally displaced persons and refugees in the Thai-Myanmar border area and an additional 5,600 remain displaced after clashes in Kayin State in September 2016. While visiting Kayin State, the Special Rapporteur was informed that many of those living in camps in the border area are afraid to return, while also facing reductions in assistance reportedly linked to limited funding and an increasingly precarious situation in the camps. She underlines the importance of continuing, consistent funding for support programmes until a greater number of refugees and internally displaced persons feel ready to return voluntarily. She notes the facilitated return of 71 individuals and that others

have returned spontaneously and encourages efforts to address factors preventing returns, including the continued presence of the military in areas of origin, concerns about housing land and property rights and difficulties in accessing civil and identification documents.

44. Landmines and unexploded remnants of war are another major factor preventing returns and continue to pose a serious threat to civilians in many areas. From January to June 2017, at least 13 deaths and 62 injuries were reported in Shan and Kachin States alone. The Special Rapporteur calls on all parties to immediately stop laying new mines. She welcomes a Government announcement in April that it will allocate $6 million to the eradication of landmines and unexploded ordnance, as well as further information on Government efforts to increase mine awareness.

45. In this context, the second 21st Century Panglong Conference was held from 24 to 29 May, with eight groups signatory to the Nationwide Ceasefire Agreement attending as full participants, seven groups from the newly formed Federal Political Negotiation and Consultative Committee attending part of the conference as special guests and several other groups choosing not to participate. The Conference agreed 37 points as part of the Pyidaungsu Accord for Peace, which the Special Rapporteur recognizes as including several important human rights-related commitments. She encourages the development of further detailed plans on these issues at future conferences, as well as efforts to include other human rights issues.

46. An inclusive approach will be vital in order to foster sustainable peace. Official figures are not available on the number of female representatives; however, the Alliance for Gender Inclusion in the Peace Process estimates that 19 per cent of delegates were women (an estimated 5 per cent increase from the previous conference). Efforts should be made to tackle, among other things, the barriers preventing women from participating in the peace process and to include a gender perspective in all sector-wide policy proposals. The Special Rapporteur also reiterates the importance of fully involving civil society in the peace process, including at the Panglong conferences.

B. Protecting the rights of women and children

47. There is a strong awareness in Myanmar that education will be crucial to the success of the next generation, and all communities visited by the Special Rapporteur raised this as a key issue. She therefore welcomes the launch of the National Education Strategic Plan 2016-2021 in February 2017, as well as efforts to improve the availability, accessibility, acceptableness and adaptability of education across the country. With an estimated 7 million children aged 5-16 outside of school, she encourages further efforts to improve access to school and attendance rates in all areas. This includes Rakhine State, where access to quality education remains a challenge for all communities, and she encourages quick action to implement the recommendations of the Advisory Commission on Rakhine State on this topic.

48. The Special Rapporteur understands that access to education for returnee children is currently sporadic and encourages steps to ensure that all returnees can systematically access education, including through an official nationwide policy. She also encourages the progressive realization of multilingual education and opportunities for ethnic minority children to learn in their mother tongue, as well as to study their literature and culture. Further efforts are also needed to ensure that children with disabilities are able to access education — currently two out of three children with disabilities do not attend school.

49. The Special Rapporteur welcomes efforts to improve birth registration rates, including information that 21,400 birth certificates have been issued in Rakhine State, as well as flexibility on registration requirements, including allowing children to be registered without the father's name. She encourages the expansion of such flexibility to all areas of the country. She also welcomes the recent endorsement of the Vital Registration Manual by the Ministry of Planning and Finance. With more than 20 per cent of children under five remaining unregistered, she encourages quick action to institute a routine registration system in line with the new manual.

50. The Special Rapporteur welcomes the release of 67 children from the armed forces in June 2017. She notes, however, that a new version of the Action Plan to Eliminate Forced Labour has yet to be finalized. She encourages further efforts to strengthen safeguards against child recruitment, including by giving young people the benefit of the doubt in cases where documentation is inconclusive, and to consider banning all recruitment through brokers. She is concerned that recruitment of minors among ethnic armed groups and militias appears to be increasing. The Special Rapporteur calls on all parties to publicly commit to ending the recruitment and use of children and on the Government to allow access to all armed groups to develop action plans to end recruitment. She is also concerned at cases of children being detained for association with armed groups, including one case where a child was reportedly charged with spying. She underlines that association of children with armed groups should always be treated as involuntary and calls for the immediate release of any children held on such charges.

51. Child labour remains widespread in Myanmar and the Special Rapporteur welcomes information that the Government is working in partnership with the International Labour Organization and other stakeholders to develop a national action plan on child labour. During this process, it will be important to finalize a list of hazardous work forms, which, as recent high profile incidents illustrate, should include domestic work. She reiterates her call to incrementally raise the age of compulsory education to match the minimum employment age.

52. It is important that the legislative framework protecting children in Myanmar is updated and the draft child rights law is vital in this respect. The Special Rapporteur encourages Parliament to ensure that positive elements of the bill are maintained and that remaining gaps are identified and addressed in line with international standards, including in relation to the employment of children in unregulated areas and strong provisions on accountability for crimes against children.

53. There remains a need for urgent steps to tackle sexual and gender-based violence, including domestic violence as well as such violence when committed by the authorities, including the security forces. The Special Rapporteur notes the Government's commitment to operationalize the National Strategic Plan for the Advancement of Women, including the drafting of national gender-based violence standard operating procedures, as well as localized standard operating procedures for gender-based violence in Kachin, Rakhine and Shan States. It will also be important to ensure as soon as possible that it is formally clarified that a police report is no longer required for survivors of gender-based violence to access health care, as well as to expand availability of shelters. The Special Rapporteur understands that the Ministry of Social Welfare Relief and Resettlement has established telephone lines for survivors of gender-based violence but notes that there is limited capacity, with only 30 staff at national level, and reports that calls go unanswered.

54. The Special Rapporteur welcomes information from the Government on the important aims of the pending draft prevention of violence against women law and

underlines the importance of retaining key provisions, including those setting out definitions compliant with the Convention on the Elimination of All Forms of Discrimination against Women, including of intimate partner violence, gender identity and rape, as well as provisions covering marital rape and sexual violence in conflict, including ensuring that cases of conflict-related sexual violence committed by the military are heard in civilian courts. It will also be vital to ensure that the new law supersedes any law or other provisions in variance with it. She hopes that a bill which retains these vital provisions can be submitted to Parliament and passed promptly.

55. The Special Rapporteur notes the Maternal Conditional Cash Transfer programme, begun in June 2017, which can provide important funds to mothers. However, she is seriously concerned that it is accessible only to women whose last child is aged two years or over. This constitutes an enforcement of birth spacing, which violates the sexual and reproductive rights of women and has a discriminatory impact on women in hard-to-reach areas with less access to family planning. She calls for its expansion to cover all mothers irrespective of the age of their other children. She notes that, while the budget of the Ministry of Social Welfare, Resettlement and Relief has increased, it still constitutes only 0.25 per cent of the overall budget.

C. Combating and preventing religious intolerance and incitement to hatred and violence

56. The Special Rapporteur has emphasized the importance of respect for the rights of minorities, which is central to national reconciliation. She is concerned at continuing reports of hate speech and negative sentiments against non-Buddhists, particularly those that incite and have led to hatred and violence. While the majority of incidents have occurred in Rakhine State against Muslim minorities, there have been other incidents involving different religious minorities in other parts of the country. Recognizing and protecting the rights of religious minorities should not be viewed as a zero-sum game at the expense of the majority population but rather for the benefit of everyone.

57. In April in Yangon, two madrasas in Thaketa Township were reportedly closed following pressure from Buddhist ultranationalists. This resulted in hundreds of children having to find alternative places to attend school and in Muslim worshippers being unable to conduct prayers there, including during the month of Ramadan, even though this has been a regular arrangement for several years. In late May, Muslim residents reportedly held Ramadan prayers outside of one of the two madrasas and three were arrested as the organizers since the event was deemed to have "threatened stability and rule of law". The continuing closure of the madrasas has caused concern and consternation among the Muslim community, which had apparently not been consulted regarding the decision.

58. In May, in Yangon, a 75-year old mosque and madrasa located in Dagon East was banned from further operating following complaints made to the Ministry of Religious Affairs. Myanmar Muslim religious organizations were not told the source of the complaint and got no response when they appealed to the Ministry for space to conduct religious worship in Thaketa and South Dagon Townships. According to an open letter to the State Counsellor from 20 non-governmental organizations in August, the construction of new mosques has not been permitted in the country since 1962. Also in May, in Yangon, a mob of over 100 people, reportedly led by Buddhist ultranationalists, besieged a Muslim home in Mingalar Taung Nyunt Township at night claiming that illegal "Bengalis" resided there, resulting in the

hospitalization of at least two Muslim men. Five people have since reportedly been charged for attempting to commit a crime with the aim of disturbing the stability of the State by spreading hatred and incitement.

59. In June in Kachin State, two men from Hpakant Township were reportedly charged under section 19 of the Peaceful Assembly and Peaceful Procession Act for leading a commemoration of the six-year anniversary of renewed conflict. Reportedly, about 500 people participated in the service peacefully at the Kachin Baptist Church in Hpakant but were told in court that they had failed to act according to procedure despite asking permission from local authorities to hold the ceremony. Also in June, three other men, in Myitkyina, were charged under the same law for holding prayers to mark the anniversary. Reportedly, worshippers who were also internally displaced persons and had travelled from elsewhere to join the service were deemed to have been marching, and therefore participating in a procession, without permission.

60. In early July in Rakhine State, seven Muslim men were reportedly attacked by a group of Rakhine people at a jetty, resulting in one death and six badly injured. This incident was reported widely but an authoritative account of it has yet to emerge. The Special Rapporteur obtained little clarity on the case during her visit.

61. Also in early July, in Sagaing Region, village level officials and a Buddhist abbot reportedly organized a group of villagers from Teetaw Village Tract, who threw rocks at the home of a Christian worshipper where a religious service was being held. The officials and the abbot had, prior to the incident, apparently threatened four villagers who had converted to Christianity that they should revert to Buddhism or face banishment, but the four converts had refused. The attacks lasted for hours and police personnel who arrived at the scene took some time to control the situation. At least four people were injured and property was damaged. It is not clear whether any action has been taken against those responsible for, and involved in, the violence.

62. In early August, ultranationalist monks and their supporters reportedly set up camps in Yangon and Mandalay to protest against the Government for not sufficiently protecting the interests of the Bamar and Buddhists. The authorities deemed these gatherings unlawful and instructed participants to disperse and others not to take part in them. Several protestors who did not disperse were reportedly arrested. While these protests appeared to have been peaceful, they were arguably part of the bigger movement and campaign advocated by ultranationalist monks and Buddhists hardliners which incite discrimination and hostility against non-Buddhists.

63. These incidents demonstrate clear violations of the right to freedom of religion or belief. If the Government does not take proactive measures to address such incidents, they could lead to further religious intolerance. Politicization of religious beliefs and negative stereotyping of some religions and beliefs should be stopped. The State's responsibilities with regard to respecting and protecting the rights to freedoms of opinion and expression, of peaceful assembly and association and of religion need not come into conflict with its obligation to prohibit advocacy of incitement to discrimination, hostility or violence.

64. The Special Rapporteur has made previous recommendations on the relationship between responsibility to prohibit such advocacy and compliance with the conditions for restricting freedom of expression (A/70/412, para. 32; A/HRC/31/71, para. 32). She has pointed to the Rabat Plan of Action on the prohibition of advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence as guidance for the hate speech

law that is reportedly still being drafted[10] and has also recommended the development of a comprehensive anti-discrimination law or policy to ensure that minorities can exercise their human rights without discrimination and in full equality before the law. She further recalls the need to respect and uphold the unconditional protection status of the inner dimensions of freedom of religion or belief and freedom of opinion. This is in addition to providing space for different dissenting religious or political views, refraining from any coercion or interference, as well as providing protection against coercion exercised by third parties, as stressed by the Special Rapporteur on freedom of religion or belief.[11]

D. Rakhine State

65. At the time of writing, the final report of the Advisory Commission on Rakhine State had just been issued, followed closely by a reprehensible series of attacks against security forces, in particular the police in northern Rakhine. The Special Rapporteur echoes the Chair of the Advisory Commission and the United Nations Secretary-General in saying that the only way forward in tackling the challenges facing Rakhine State is by taking the path of peace, rather than violence and aggression. She further notes that the "Government welcomed recommendations for meaningful and long-term solutions," and that it would implement them "to the fullest extent, and within the shortest time frame possible, in line with the situation on the ground."

66. She notes the strong recommendation by the Commission to lift existing restrictions on movement in Rakhine State which not only hinder progress towards intercommunal harmony, economic growth and human development but also result in the infringement of Muslim communities' rights to access to education, health care and livelihoods. Such restrictions have been further justified on account of the reported increasing threats and intimidation faced by these communities from the extreme elements said to be responsible for the attacks in October and November 2016 and most recently in August 2017 against the State in Rakhine. These elements are further claimed to be responsible for the ongoing violence and attacks against local authorities, district officials and village leaders as well as ordinary villagers, whether Muslims, Rakhine or Mro.

67. While the Special Rapporteur fully appreciates the imperative for the authorities to take action to secure the safety of the population and stability of the region, continued segregation of communities and enforcement of discriminatory local orders, policies and practices have only exacerbated the situation in Rakhine State, increasing animosity and diminishing understanding among the different communities. With a recent study[12] showing a decline in the number of young people from the Muslim community able to speak the Myanmar or Rakhine languages in camps in the Sittwe area, efforts to ensure access to education among young people will be critical to future efforts towards reconciliation.

68. The entire Muslim population in Rakhine State also cannot and should not be accused of being complicit or colluding with those extreme elements simply by virtue of the latter claiming to represent the rights and act on behalf of the former and without clear evidence.[13] The Special Rapporteur recalls that the Rakhine

[10] A/HRC/34/67, para. 11.

[11] A/HRC/31/18.

[12] Danish Refugee Council and United Nations High Commissioner for Refugees, "Sittwe Camp profiling report" (June 2017).

[13] See "Summary of the report of the Investigation Commission for Maungdaw in Rakhine State", para. 16. Available from www.londonmyanmarembassy.com/index.php?id=350.

community members that she met emphatically stated that the views of hardliners do not represent theirs and even indicated that the current situation is being made worse by the Government's giving in to the views and demands of hardliners rather than the ordinary members of affected communities. The call from some quarters for all civilians in Rakhine State to take up arms is therefore particularly alarming. And the suggestion for "no-Bengali" zones to be set up is also not only unhelpful but could be considered as incitement to discrimination and hostility. As the Advisory Commission on Rakhine State has warned, northern Rakhine may provide fertile ground for radicalization if human rights concerns are not properly addressed and if the population remains politically and economically marginalized.

69. During her July visit, the Special Rapporteur had sought to see progress in the implementation of the Commission's interim recommendations and was informed that relevant ministries are meeting every two weeks to work on implementing those recommendations. In particular, she asked to meet representatives of the three internally displaced persons' communities whose camps were recommended to be closed. She has already noted her findings on this as well as related concerns, especially regarding the unsustainable re-settlement practices thus far.[14] She had received a mixed response from the Government and affected Kaman community members from Ramree as to whether their move to Yangon was voluntary or otherwise. The affected Rakhine community members from Ka Nyin Taw whom the Special Rapporteur met in their new location complained about not being consulted in the resettlement process generally and about their relocation area being low lying and susceptible to flooding during heavy rain.

70. The Special Rapporteur further recalls that she was unable to visit Kyein Ni Pyin camp, populated by Rohingya internally displaced persons and later learned of the Government's attempt to transform the camp into a village. Humanitarian actors have voiced concerns that the construction of individual houses may improve the living conditions of the internally displaced persons but will also contribute to cementing segregation even further. Affected communities have consistently refused to move into individual houses for fear that this would be interpreted as a renunciation of their right to return home. In addition, shelters are being built without consideration for infrastructure and public health needs, blocking desludging routes and access to latrines. An especially major concern is that this approach may become a precedent for future camp closures.

71. The Special Rapporteur understands that the citizenship verification exercise is now more fraught owing to threats from extremist groups against the Rohingya and Muslim communities to deter them from participating as otherwise they will be considered traitors, including against village administrators who had previously assisted in the exercise. Officials attempting to administer the verification exercise are being challenged by hardliners not to complete it if this means giving recognition to those who qualify as citizens. The Special Rapporteur supports the Commission's related interim recommendation, which it has reiterated in its final report, that the Government should immediately establish a clear strategy and timeline for the citizenship verification process and that it should be discussed with members of the Rakhine and Muslim communities. She also reiterates the need to reform the discriminatory 1982 Citizenship Law upon which the process is currently based, which is also a recommendation of the Commission.

72. The Special Rapporteur is informed that the Government has stated that children and descendants of citizens do not need to go through the verification process. However, she was informed by the Ministry of Labour, Immigration and Population that Kaman Muslims — who are a recognized ethnic group, for

[14] See the Special Rapporteur's end-of-mission statement.

example — must go through the verification process. She further recalls that the Kaman Muslims that she met in Kyauk Ta Lone camp in Kyaukphyu were confined to the camp and notes that, out of 185 applications for citizenship verification from among this community, only three were successfully processed, while the rest have remained pending for a protracted period. They apparently also had to pay a fee for the process even though the Labour Ministry has confirmed that no such fee is required. It would further be crucial for those who have been granted citizenship to be able to fully exercise the rights to which they are entitled beyond being able to travel abroad. Security reasons cannot continue to be used to justify depriving them of access to food, education, health care and livelihoods. The Special Rapporteur welcomes the facilitation by the Labour Ministry for around 2,000-3,000 Muslims from northern Rakhine to undertake their Hajj pilgrimage to Saudi Arabia. She nonetheless received reports, which are regrettable if true, that several Muslims were physically blocked from leaving Rakhine State to undertake the pilgrimage despite having obtained official permission.

73. According to the Government, the United Nations and other international actors resumed humanitarian work in previously restricted areas, including northern Maungdaw, in early January 2017 and humanitarian aid has reached 95 per cent of those affected. However, the food security situation in northern Rakhine is still acute, which is significantly attributed to the restrictions in movement as well as security operations that have altered the operational context in the area. Residents reportedly do not have full access to forests, agricultural land and fishing grounds owing to the presence of security personnel. Fishermen are not allowed to resume fishing activities in Maungdaw South unless they apply to undergo the citizenship verification process, which is meant to be a voluntary exercise. Access for humanitarian actors remains conditional and reportedly the Government suspended issuance of travel authorizations to one organization that issued a critical assessment, and the State government also issued a temporary suspension of data collection, surveys and assessments conducted by United Nations and international non-governmental organizations.

74. She was also informed of a third Government-managed visit in July involving select journalists, this time including foreign correspondents, to areas normally inaccessible to media, particularly since the attacks in October 2016. The visit reportedly took five days and involved at least five villages, where many villagers spoke of continuing violations and abuses suffered and how they felt engulfed in a state of fear, caught between two sides.[15]

75. The Special Rapporteur noted in her statement at the end of her July visit that many of those that she met in Buthidaung Prison had not been properly informed of the charges against them and were mostly without legal representation. She acknowledges nonetheless that, following her previous visit, the authorities had made efforts to allow the families of those detained to visit the detainees. Separately, she raised her concerns with the authorities regarding reported deaths in custody, including those of children, among those arrested during the security operations following the 9 October attacks. She recalls in particular how the children in detention that she met did not appear to fully understand their situation and the implication for their liberty and other freedoms if found guilty of the charges against them. Detention of children should be used as a measure of last resort, as stated in article 37 of the Convention on the Rights of the Child; where children are detained, legal proceedings should be completed as quickly as possible to minimize periods of detention. As reports of detention of children in Rakhine are already three months old at least, detained children should be immediately released

[15] Ibid.

to their families and/or guardians and provided with support. Children should not be prosecuted for "illegal" movement and those arrested on such grounds should be immediately released.

76. The Special Rapporteur notes that the President's Maungdaw Investigation Commission publicly released its summary report on 6 August. Among other things, it stated that many allegations of human rights violations are being investigated or have been recommended for further investigation. The Commission also admitted that it was not able to verify many alleged violations or crimes, including torture, rape and arson, and asked that these be properly addressed by the relevant authorities. The Special Rapporteur looks forward to receiving and studying the Commission's full report.

V. Conclusions

77. The Special Rapporteur recognizes that development and security are pressing priorities for Myanmar currently. However, she also urges Myanmar to recognize human rights as an equal priority, both because human rights are a lynchpin in ensuring that development and security are realized in a balanced and just way and because steps to guarantee the rights of the people of Myanmar are steps to improve their day-to-day lives.

78. In striving to achieve these three priorities, the United Nations and its partners can, and do, offer vital assistance. The Special Rapporteur is therefore extremely concerned by the increasing anti-United Nations and anti-international non-governmental organization sentiment being built up in some areas of the country, which appears to be going unchallenged. The Government must take active steps to stop incorrect rumours or stories from being spread and to publicly recognize the vital work carried out by these organizations. She recalls, however, that to be a true democratic society, freedom of expression must be guaranteed and any steps should respect this right. In this vein, she encourages the Government to urgently protect freedom of speech and remove the current limitations on this right while ensuring that incitement to hate, intolerance and violence is appropriately dealt with in line with international standards and norms. Myanmar also needs to recognize the indispensable work carried out by civil society organizations and human rights defenders and urgently ensure that they can work freely without fear of reprisals, threats or intimidation.

79. All civilians should be fully protected in all areas of the country, and no allegations of serious human rights violations should be left uninvestigated or dismissed, no matter who the alleged perpetrators. Now, more than ever, Myanmar should enlist the assistance of outside experts to independently, impartially and objectively assess what happened in Rakhine State following the attacks on Border Guard Police facilities on 9 October 2016 and the clashes in November 2016 and the continuing reports of killings and other rights violations during related security operations, with the sole emphasis on finding out what exactly happened, so that future incidents can be avoided. Similarly, Myanmar must ensure that the numerous and continuing cases of alleged serious violations of human rights by all parties to the conflict in Shan and Kachin States are impartially and independently investigated. The people of Myanmar also have a right to know the truth, whatever that may be, and this is why the Human Rights Council established a fact-finding mission, and why it would be in the best interest of Myanmar to cooperate fully with it. The Special Rapporteur reiterates that she stands ready to work with Myanmar to ensure that the rights of all are guaranteed.

VI. Recommendations

80. **Regarding the rule of law and democratic space, the Government should:**

(a) **Ensure respect for the right to a fair trial and due process guarantees for all, including by ensuring that prisoners have access to their lawyers at all stages of the process, including in the pretrial phase;**

(b) **Take further steps to strengthen the independence of the judiciary and lawyers, including reforming the Bar Council Act;**

(c) **Amend or repeal legislation and legal provisions that limit fundamental freedoms in ways that are incompatible with international standards, including those previously identified (see A/HRC/31/71, annex), to bring them into line with international human rights standards. Any limitations to fundamental freedoms should be crafted narrowly and in accordance with international standards, so as to avoid their arbitrary application;**

(d) **Remove criminal sanctions from the Peaceful Assembly and Peaceful Procession Law and amend or repeal section 505 (b) of the Penal Code;**

(e) **Further amend the Telecommunications Law to bring all provisions fully into line with international standards, including by repealing section 66 (d);**

(f) **Review and amend the Citizenship Law to bring it into line with international standards. In particular, remove provisions that provide for the granting of citizenship on the basis of ethnicity or race;**

(g) **Initiate a process of consultation with all stakeholders, possibly through the establishment of a preparatory committee focusing on the review and amendment of the Constitution, to bring it into line with international standards;**

(h) **Cease immediately the arbitrary arrest and prosecution of those exercising their fundamental rights, and release all those arrested for exercising their rights;**

(i) **Conduct prompt, thorough, independent and impartial investigations and systematically ensure redress for any violence, threats, acts of intimidation or harassment against members of the media and of civil society;**

(j) **Establish an appropriate, systematic consultation process for the drafting and review of amendments to existing legislation or new draft laws to ensure transparency, vetting for compliance with international standards and adequate engagement with civil society organizations and members of the public, possibly through a law on law-making.**

81. **Regarding conflict and the peace process, all parties to the conflict should:**

(a) **Immediately stop laying new landmines;**

(b) **Abide by all applicable provisions of international humanitarian law and human rights law, including the principle of distinction and proportionality, and consistently take precautions to protect the civilian population;**

(c) **Immediately release all children (aged 18 and under) in their ranks, refrain from recruiting children and take steps to institute or strengthen measures to prevent underage recruitment.**

82. **Regarding conflict and the peace process, the Government should:**

(a) Immediately ensure prompt, thorough, independent and impartial investigations into allegations of violations committed in conflict areas and the prosecution and punishment of all perpetrators;

(b) Immediately ensure that the United Nations and its partners have regular, independent and predictable access to all those in need of humanitarian assistance, wherever they are located and speed up and streamline the procedure for seeking and granting travel authorizations;

(c) Take specific steps to develop a comprehensive support programme for victims and survivors of sexual and gender-based violence, including access to justice, health and psychosocial care and socioeconomic support, and take the necessary steps to ensure that perpetrators are prosecuted and convicted;

(d) Ratify the Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-personnel Mines and on Their Destruction, and scale up the clearance of mines and unexploded ordnance and marking and fencing activities. Ensure systematic mine risk and education activities;

(e) Collect official data on the participation of women in the peace process, and take steps to ensure greater participation, particularly in leadership roles, including at the next Union Peace Conference, with a minimum quota of 30 per cent and integration of a gender perspective into sector-wide policy proposals;

(f) Ensure the involvement and integration of civil society organizations in the peace process.

83. Regarding development and economic and social rights, the Government should:

(a) Ensure access to adequate health, education and other basic services for all, particularly in Rakhine State, without discrimination;

(b) Ensure that all projects, including special economic zones, fully comply with existing laws and international standards. Ensure that communities are consistently provided with information on the status of all development projects and that participatory, inclusive and meaningful consultations with the communities are conducted, including during the development of the environmental impact assessments and resettlement plans;

(c) Ensure careful drafting of any changes to existing or new legislation, rules, regulations and agreements governing extractive industries and major development projects to ensure that they include transparency requirements and environmental, social and human rights protection;

(d) Ensure that all private sector involvement in the implementation of the sustainable development agenda is based on corporate responsibility to respect human rights, in line with the Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework;

(e) Ensure the full implementation of the Guiding Principles on Business and Human Rights and protect against any human rights abuse within the territory of Myanmar by third parties, including business enterprises, through adequate policies and laws;

(f) Ensure that the protections provided in the National Land Use Policy are retained and draft, following consultations, an overarching land law that is in accordance with international human rights standards;

(g) Ratify the International Covenant on Economic, Social and Cultural Rights.

84. **Regarding rights of women, children, and religious minorities:**

(a) Ensure access to education for all, including children with disabilities, returnee children and children from all communities in Rakhine State without discrimination;

(b) Ratify the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict;

(c) Treat all associations of children with armed groups as forced, not voluntary, and release all children detained for spying or other similar charges;

(d) Enact laws on the prevention of violence against women and on the rights of children that are compliant with the international obligations of Myanmar;

(e) Incrementally raise the age of compulsory education (currently age 10) to match the minimum employment age (age 14);

(f) Condemn publicly incidents of incitement and develop, in collaboration with relevant stakeholders, comprehensive policies to combat intolerance, negative stereotyping and stigmatization of and discrimination, incitement to violence and violence against persons or minorities based on religion or belief following Human Rights Council resolution 16/18;

(g) Ensure that all relevant legislation, including the draft hate speech law, is in line with the Rabat Plan of Action on the prohibition of advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence and with the conditions for restricting freedom of expression under international human rights standards, recalling that Myanmar has accepted in principle the ratification of the International Covenant on Civil and Political Rights (see A/HRC/31/13/Add.1, para. 7);

(h) Ensure that all individuals are able to fully exercise their rights to freedom of religion and belief, including their right to manifest their religion or belief in public or private;

(i) Ensure respect for the rights of minorities, including through education and awareness-raising measures addressing the root causes of discrimination, and promote interfaith and intercommunal dialogue, as well as confidence-building.

85. **Regarding Rakhine State, the authorities should:**

(a) Fully implement the recommendations of the interim and final reports of the Advisory Commission on Rakhine State;

(b) Conduct prompt, thorough, independent and impartial investigations into all alleged violations of international human rights law, and hold perpetrators to account;

(c) Lift the curfew order and restrictions on freedom of movement in Rakhine State;

(d) Review and revise all local orders, instructions and other policies and practices that are discriminatory in law and in practice;

(e) Immediately seek durable solutions for the persons who have been internally displaced since 2012, ensuring that all solutions are identified in

consultation with the affected communities and that any relocation is entirely voluntary;

(f) Uphold the rights of accused persons by ensuring that all due process guarantees are respected and fulfilled, including by ensuring that all such persons are made fully aware of the charges against them and of their rights, as well as by continually keeping their families informed of their arrest or detention and location;

(g) Ensure that children are detained only as a measure of last resort and, where they are being detained, ensure that legal proceedings are completed as quickly as possible and that detention is for the shortest possible duration;

(h) Take concrete steps to address long-standing challenges to social and economic development through a human rights-based approach, while ensuring the participation of affected communities and fostering reconciliation and greater integration between communities;

86. The Special Rapporteur reiterates her previous recommendation that the Government consider requesting relevant international organizations, in particular the Office of the United Nations High Commissioner for Human Rights, through the establishment of a fully mandated country office, to provide technical assistance and capacity-building in the realization of human rights for all in Myanmar.

87. To the international community:

(a) Ensure consistent funding to meet humanitarian needs, including for support programmes to refugee and internally displaced persons to ensure that individuals do not feel pressured into returning before they feel comfortable doing so;

(b) Put human rights at the forefront of all bilateral cooperation with, and investments in, Myanmar and proactively adhere to the Guiding Principles on Business and Human Rights;

(c) Ensure that all investors and businesses, domestic and international, abide by the Guiding Principles on Business and Human Rights and other relevant standards in their investments and operations in Myanmar;

(d) Ensure that the home States of companies operating in Myanmar fulfil their duties to protect human rights as called for by the Human Rights Council in its resolution 31/24.

88. To the United Nations:

The United Nations should arrive at a more comprehensive, but targeted and coordinated, approach to United Nations action in Myanmar, including peacebuilding, development and humanitarian assistance, with human rights principles at their core.